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SERVICE DATE - APRIL 26, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33846

PETER A. GILBERTSON, ET AL., AND SOUTHSORE CORPORATION--
CONTROL EXEMPTION--ILLINOIS INDIANA DEVELOPMENT COMPANY, LLC

Decided: April 19, 2000

On January 27, 2000, Peter A. Gilbertson, H. Terry Hearst, and Bruce A. Lieberman (Gilbertson, et al.), and SouthShore Corporation (collectively, petitioners) filed a petition for an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323-25 to control Illinois Indiana Development Company, LLC (IIDC).¹ We will grant the exemption.

BACKGROUND

In IIDC Acquisition Exemption, IIDC, a noncarrier, was granted an exemption to acquire from Norfolk Southern Railway Company (NS), and to operate, approximately 25.888 miles of rail line located in LaPorte County, IN, as follows: (1) a portion of the Michigan City Branch line from milepost 136.0 in Dillon to the end of the line at milepost 158.518 in Michigan City; and (2) approximately 3.37 miles of the South Bend Branch line from milepost 200.369 in Dillon to the end of the track in Kingsbury. In addition, in CSS Operation Exemption, Chicago SouthShore & South Bend Railroad (CSS), a Class III rail carrier, was granted an exemption to operate the line acquired by IIDC.

SouthShore Corporation owns 60% of CSS. Gilbertson, et al., are officers and/or directors of SouthShore Corporation, are on the management committee of CSS, and are minority shareholders in SouthShore Corporation. They indirectly control CSS, and three other rail carriers, Pacific Harbor Line, Inc. (PHL), Louisville & Indiana Railroad Company (L&I), and New York & Atlantic Railway Company (NY&A).² In order to avoid any unlawful control of IIDC pending a

¹ This proceeding is related to two concurrently filed notices of exemption in Illinois Indiana Development Company, LLC--Acquisition and Operation Exemption--Norfolk Southern Railway Company, STB Finance Docket No. 33845 (STB served and published at 65 FR 10149 on Feb. 25, 2000) (IIDC Acquisition Exemption); and Chicago SouthShore & South Bend Railroad--Operation Exemption--Illinois Indiana Development Company, LLC, STB Finance Docket No. 33819 (STB served and published at 65 FR 10148 on Feb. 25, 2000) (CSS Operation Exemption).

² PHL has certain operating rights on track owned or leased by the Port of Long Beach in Long Beach, CA, and provides switching services on track owned by the Port of Los Angeles in Los Angeles, CA. L&I owns and operates approximately 115 miles of rail line in Indiana and Kentucky
(continued...)

decision in this proceeding, all of the issued and outstanding membership interests in IIDC owned by petitioners were placed in an independent voting trust. Upon dissolution of the voting trust, SouthShore Corporation will acquire 60% membership interest in IIDC, and Gilbertson, et al., will be appointed to three of the five management positions in IIDC.

CSS's local freight rail operations include: (1) trackage rights over a rail line owned by Northern Indiana Commuter Transportation District from milepost 0.9 near South Bend, IN, to milepost 69.19 near Hammond, IN; (2) a CSS-owned rail line from milepost 0.0 in Chicago, IL, to milepost 6.2 at the Illinois-Indiana State line, and approximately 387 feet from that 6.2-mile line to the point of connection with Chicago Rail Link; and (3) nonexclusive switching service over approximately 8.7 miles of yard and switching track owned by the Illinois International Port District. CSS also has overhead trackage rights over: (1) approximately 53 miles of Illinois Central Railroad Company's line between South Joliet, IL, and Chicago; (2) approximately 2 miles of Norfolk and Western Railway Company's line in Chicago; and (3) approximately 7.4 miles of CSX Transportation, Inc.'s line from Miller, IN, to Pine Junction, IN. CSS's rail system connects with the line at IIDC milepost 157.3.

Petitioners state that, although PHL, L&I, and NY&A are commonly controlled, they are operated as separate entities and will continue to be operated that way after this transaction is approved. Similarly, IIDC and CSS will be operated as separate entities. Any dealings, such as the provision of operating, administrative, clerical, and accounting services, between IIDC, on the one hand, and CSS, PHL, L&I, and/or NY&A, on the other hand, will be contractual in nature and based upon arm's-length negotiations between the parties. IIDC will assume all the direct financial risks of the ownership of the line, as well as all other ownership obligations. IIDC will also have its own books, records, and accounts and will be managed separately from CSS, PHL, L&I, and NY&A.

DISCUSSION AND CONCLUSIONS

The acquisition of control of a rail carrier by a person that is not a rail carrier but that controls any number of rail carriers requires prior approval by the Board under 49 U.S.C. 11323(a)(5). Under 49 U.S.C. 10502(a), however, we must exempt a transaction or service from regulation when we find that: (1) regulation is not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

Detailed scrutiny of the proposed transaction through an application for review and approval

²(...continued)

and has certain overhead trackage rights over lines owned by New York Central Lines, LLC, in Indiana. NY&A conducts freight operations over approximately 268.6 miles of track owned by the Long Island Rail Road Company in New York.

under 49 U.S.C. 11323-25 is not necessary to carry out the RTP. Rather, an exemption will promote that policy by minimizing the need for Federal regulatory control over the proposed transaction and reducing regulatory barriers to entry [49 U.S.C. 10101(2) and (7)]; ensuring that a sound rail transportation system will continue to meet the needs of the shipping public [49 U.S.C. 10101(4)]; and fostering sound economic conditions in transportation, ensuring effective coordination among carriers, and encouraging efficient management [49 U.S.C. 10101(5) and (9)]. Other aspects of the RTP will not be affected adversely.

Regulation of the transaction is not necessary to protect shippers from the abuse of market power. According to petitioners, no shipper on the line will lose rail service options as a result of this control transaction, and any business dealings between IIDC, on the one hand, and CSS, PHL, L&I, and/or NY&A, on the other, will be: (1) contractual in nature; (2) on terms no more favorable than commercially reasonable; and (3) the result of arm's-length negotiations between the parties.³ Nevertheless, to ensure that the shippers are informed of our action, we will require petitioners to serve a copy of this decision on all shippers on the line within 5 days of the service date of this decision and certify to us that they have done so.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Under 49 U.S.C. 11326(c), however, we may not impose labor protection for transactions under 49 U.S.C. 11324-25 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, labor protective conditions may not be imposed under the statute.

This proceeding is exempt from environmental reporting requirements under 49 CFR 1105.6(c)(2)(i) because it will not result in any significant change in carrier operations. Similarly, the transaction is exempt from the historic reporting requirements under 49 CFR 1105.8(b)(3) because it will not substantially change the level of maintenance of railroad properties.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt, from the prior approval requirements of 49 U.S.C. 11323-25, the acquisition of control by petitioners as described above.
2. Petitioners must serve a copy of this decision on all shippers on the line within 5 days after the service date of this decision and certify to the Board that they have done so.

³ Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

3. Notice will be published in the Federal Register on April 26, 2000.
4. This exemption will be effective on May 26, 2000. Petitions to stay must be filed by May 11, 2000. Petitions to reopen must be filed by May 22, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams
Secretary